United States Department of Labor Employees' Compensation Appeals Board

L.S., Appellant))
and) Docket No. 19-0802) Issued: February 12, 2020
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Huntsville, AL, Employer)
Appearances: Alan J. Shapiro, Esq., for the appellant ¹	Case Submitted on the Record

ORDER REMANDING CASE

Office of Solicitor, for the Director

Before:

CHRISTOPHER J. GODFREY, Chief Judge PATRICIA H. FITZGERALD, Deputy Chief Judge JANICE B. ASKIN, Judge

On March 4, 2019 appellant, through counsel, filed a timely appeal from a January 18, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 19-0802.

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On July 11, 2014 appellant, then a 60-year-old laborer/custodian, filed three occupational disease claims (Form CA-2). In his first Form CA-2, he alleged that he had developed bilateral hip osteoarthritis and bilateral knee arthritis due to his employment duties. In the second Form

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² Order Remanding Case, Docket Nos. 17-1863, 17-1867, 17-1868 (issued April 18, 2018).

CA-2 appellant alleged that he developed bilateral carpal tunnel syndrome due to the above described employment duties. In the third Form CA-2 appellant alleged that he had developed bilateral torn rotator cuffs due to the above described employment duties.

By separate decisions each dated March 1, 2016, OWCP denied all three of appellant's occupational disease claims noting that he had not submitted evidence other than his claim forms in support of his claims. OWCP found in each of the three decisions that appellant had not established that the employment events occurred as alleged.

On March 1, 2017 appellant requested reconsideration of the three March 1, 2016 decisions and submitted a report dated February 20, 2017 from Dr. William C. Gannaway, a Board-certified internist.

By two separate decisions dated March 6, 2017, OWCP denied reconsideration of appellant's bilateral carpal tunnel and bilateral torn rotator cuff claims.

By decision dated April 10, 2017, OWCP reviewed the merits of appellant's claim for bilateral hip and knee conditions, but denied modification of the March 1, 2016 decision.

Appellant appealed the two March 6, 2017 non-merit decisions regarding bilateral rotator cuff tears in OWCP File No. xxxxxx376 and bilateral carpal tunnel syndrome in OWCP File No. xxxxxx369 as well as the April 10, 2017 merit decision regarding bilateral hip and knee arthritis in OWCP File No. xxxxxx370 to the Board. In its April 18, 2018 order, the Board directed OWCP to combine these three case files, conduct further development as deemed necessary, and issue a *de novo* merit decision on appellant's claims.

By decision dated June 12, 2018, OWCP denied appellant's occupational disease claims finding that the factual evidence of record did not establish that the implicated employment factors occurred as alleged.

On July 5, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated January 18, 2019, the hearing representative affirmed with modification the June 12, 2018 OWCP decision finding that the implicated employment factors occurred as alleged. However, the hearing representative further found that the medical evidence of record was insufficient to establish causal relationship. (RD-1/18/19)

In the January 18, 2019 decision, OWCP's hearing representative discussed and relied on a series of documents from OWCP File No. xxxxxx513 including appellant's December 2014 statement; a position description; and diagnostic testing dated December 12, 2000, March 2, 2005, November 13, 2013, December 16, 2013, and January 14, 2015. The hearing representative also reviewed and discussed medical reports dated December 22, 2005, December 12, 2013, and December 19, 2013 from Dr. John J. Greco, a Board-certified orthopedic surgeon, a medical report dated October 2, 2008 from Dr. Michael W. Cantrell, a Board-certified orthopedic surgeon, a September 30, 2010 medical report from Dr. Gregory B. Miller, a chiropractor, and a March 13, 2012 report from Dr. Ray A. Fambrough, a Board-certified orthopedic surgeon. The record before

the Board on appeal does not contain these documents and, in light of OWCP's reliance on this evidence, the Board finds that the case is not in posture for decision.

OWCP's procedures provide that cases should be combined where a new injury claim is reported for an employee who previously filed an injury claim for the same part of the body and where correct adjudication depends on cross-referencing between files.³ The Board therefore finds that for a full and fair adjudication, the claims in File Nos. xxxxxx667 and xxxxxx513 be administratively combined with File No. xxxxxx369. This will allow OWCP to consider all relevant claim files and accompanying evidence in developing the current occupational disease claims.⁴

Accordingly, the Board will set aside the January 18, 2019 decision and remand the case to OWCP to administratively combine File Nos. xxxxxx667 and xxxxxx513 with File No. xxxxxx369. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the January 18, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c)(1) (February 2000); *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019); *L.S.*, Docket Nos. 17-1863, 17-1867, 17-1868 (issued April 18, 2018); *W.S.*, Docket No. 15-0969 (issued October 5, 2015); *C.C.*, Docket No. 14-1576 (issued March 9, 2015).

⁴ *Id*.

Issued: February 12, 2020 Washington, DC

> Christopher J. Godfrey, Chief Judge Employees' Compensation Appeals Board

> Patricia H. Fitzgerald, Deputy Chief Judge Employees' Compensation Appeals Board

Janice B. Askin, Judge Employees' Compensation Appeals Board